

Internal Revenue Service

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CC:CORP:BR2
PLR-151556-11
Date:
April 11, 2012

Legend

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-151556-11

Sub 4 =

Sub 5 =

Sub 6 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

PRS 1 =

Merger Partner =

Merger Sub =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

State A =

PLR-151556-11

State B =
State C =
Country V =
Country W =
Country X =
Country Y =
Territory Z =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 Distribution =

Dear :

This responds to a letter dated December 12, 2011, submitted by your authorized representatives, requesting rulings with respect to the federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Internal Distribution and the External Distribution (both defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); and (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing 2 is a publicly traded State A corporation and is the parent of a worldwide group of entities (the “Distributing 2 Worldwide Group”). Distributing 2 is also the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Distributing 2 has a single class of stock outstanding (the “Distributing 2 Common Stock”). Distributing 2 also has outstanding various share-based compensatory arrangements including stock options, restricted stock units (“RSUs”), and performance based restricted stock units (“PSUs”). In addition, Distributing 2 has a broad-based qualified employee stock ownership plan (the “Distributing 2 Stock Plan”) that currently owns approximately h percent of Distributing 2’s stock.

Distributing 2 owns, among other equity interests, all of the equity interests in the following entities: Sub 1, a State A corporation; Sub 2, a State B corporation; Sub 3, a State A corporation; Sub 4, a State B corporation; Sub 5, a State A corporation, and DRE 1, a State C limited liability company that is disregarded as separate from Distributing 2 for federal income tax purposes. Distributing 2 also owns approximately a percent of PRS 1, a State A limited liability company that is taxable as a partnership for federal income tax purposes. The remaining PRS 1 interests are held approximately b percent by Sub 1, approximately c percent by Sub 2, approximately d percent by Sub 3, approximately e percent by Sub 4, and approximately f percent by DRE 1.

PRS 1 owns all of the stock of Distributing 1, a Country V corporation, that is a holding company owning interests directly and indirectly in a number of holding and operating companies conducting foreign Business A and foreign Business B. Distributing 1 directly or indirectly owns, among other entities, all of the equity interests in the following entities, each of which is disregarded as separate from Distributing 1 for federal income tax purposes: DRE 2, a Country V limited liability company, which owns all of the equity interests in DRE 3, a Country W company; DRE 4, a Country X partnership; DRE 5, a Country Y limited liability company; and DRE 6, a Country Y limited liability. DRE 4 previously was a partnership for federal income tax purposes, but became disregarded as separate from Distributing 1 for these purposes effective on

Date 3 when one of its partners, Sub 6, a Country X corporation, converted into an unlimited liability company and became disregarded as separate from Distributing 1 for these purposes.

The Distributing 2 Worldwide Group is principally engaged in Business A and Business B, domestically and internationally. Specifically, domestic Business A is conducted directly and indirectly by Distributing 2 through entities disregarded as separate from Distributing 2 and through interests in partnerships and subsidiaries owned by Distributing 2. Foreign Business A is conducted through a number of regarded and disregarded entities directly and indirectly owned by Distributing 1, including DRE 6 in Country Y. Domestic Business B is directly conducted by Distributing 2 in divisional form and through Sub 5. Foreign Business B is conducted by DRE 4 in Country X and DRE 5 in Country Y.

Merger Partner is a publicly traded State A corporation unrelated to the Distributing 2 Worldwide Group, and is the common parent of an affiliated group of corporations filing a consolidated federal income tax return. Merger Partner has outstanding certain share-based compensation arrangements, including nonqualified stock options, stock settled stock appreciation rights, RSUs, and PSUs. Currently, Merger Partner's board of directors ("Merger Partner's Board of Directors") has j members. Merger Partner and its subsidiaries conduct businesses complementary with Business B.

The taxpayer has submitted financial information indicating that the domestic and foreign Business A and Business B operations each have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Distributing 2 Worldwide Group has determined that the separation of Business A from Business B will serve the following corporate business purposes: (i) facilitating the combination of Business B with Merger Partner's complementary businesses, which is expected to result in cost savings and increased revenue with respect to Business B; and (ii) allowing management of each of Business A and Business B to focus their attention, as well as available financial and human resources, on growing their respective businesses.

On Date 2, Distributing 2 and Merger Partner entered into a merger agreement (as amended, the "Merger Agreement") and various other agreements governing certain terms of the Proposed Transaction. On the same date, Distributing 2 and Controlled 2 entered into a separation agreement (as amended, the "Separation Agreement") governing certain terms of the Proposed Transaction. In addition, Distributing 2 entered into a committed financing arrangement pursuant to which one or more financial institutions (collectively, the "Financial Institution") will lend funds to Distributing 2 (the "Financing Commitment").

Proposed Transaction

For what are represented to be valid business reasons the following transaction has been proposed and/or completed in order to accomplish the separation of Business A and Business B.

- (i) On Date 1, Distributing 2 formed Controlled 2, a State A corporation, with cash necessary to meet minimum capital requirements.
- (ii) On Date 4, DRE 3 formed Controlled 1, a Country X corporation, with cash necessary to meet minimum capital requirements. For federal income tax purposes, Controlled 1 will be classified as a corporation.
- (iii) Through a series of transactions that will be disregarded for federal income tax purposes, DRE 3 will become the owner of a group of entities that are disregarded as separate from Distributing 1 for federal income tax purposes and that solely will be associated with the conduct of foreign Business B (the “Foreign Business B Entities”). The Foreign Business B Entities will include DRE 4 and DRE 5. However, because of Territory Z law, an immaterial amount of assets associated with the operation of foreign Business B in Territory Z, which are held by another disregarded entity indirectly owned by Distributing 1, will be sold to a Territory Z subsidiary of Merger Partner immediately following the Combination (described in step (xv) below).
- (iv) At least n days before Merger Partner’s shareholders vote on whether to approve the Reverse Merger (described in step (xiv) below), the Financial Institution will, pursuant to the Financing Commitment, make a loan for its own account to Distributing 2 (the “Distributing 2 Debt”). Under the Financing Commitment, the Distributing 2 Debt will mature j days after its issuance (prepayable without penalty) and will bear interest at a floating rate. Distributing 2 will use the proceeds of the Distributing 2 Debt for general corporate purposes. The Financial Institution may enter into hedging arrangements with respect to the Distributing 2 Debt, provided that neither Distributing 2 or Merger Partner nor any member of their respective affiliated groups will be a party to such arrangements.

In connection with the issuance of the Distributing 2 Debt, Financial Institution and Distributing 2 expect to enter into an exchange agreement (the “Securities Exchange Agreement”) pursuant to which Financial Institution will exchange Distributing 2 Debt for Controlled 2 debt (the “Controlled 2 Securities”) received by Distributing 2 in the Controlled 2 Contribution (described in step (vi) below) (the “Securities Exchange”). It is also expected that an underwriting agreement with Financial Institution will be entered into at the same time, pursuant to which there will be an offering of the Controlled 2 Securities to investors. It is expected

that the underwriting fee will be paid in cash. The Securities Exchange Agreement will provide that the pricing for the exchange will be determined based on the value of the Distributing 2 Debt and the Controlled 2 Securities as of the date of the exchange and that the exchange will occur at least 0 days after the issuance of the Distributing 2 Debt. If the Securities Exchange Agreement is entered into before the approval of the Reverse Merger by Merger Partner's shareholders, consummation of the transactions provided for in the Securities Exchange Agreement and the underwriting agreement will be contingent upon such event occurring.

The Merger Agreement provides that, so long as the Financial Institution is able to market and price the Securities Offering (described in step (xi) below) where the yield to maturity on the Controlled 2 Securities is at or below a predetermined cap (the "Cap"), Distributing 2 shall take reasonable best efforts to enter into the Securities Exchange Agreement and complete the Securities Exchange. The Cap has been set such that the inability to market and price the Securities Offering within the Cap is expected to occur only in the event of market disruption.

To ensure that the Proposed Transaction can be completed in the unlikely event of market disruption (*i.e.*, the Controlled 2 Securities cannot be marketed at all, or can be marketed only above the Cap), Distributing 2 and the Financial Institution have entered into the Committed Exchange Arrangement as part of the Financing Commitment. Pursuant to the Committed Exchange Arrangement, the Financial Institution has committed, in certain circumstances and subject to certain conditions, to exchange the Distributing 2 Debt for loans of Controlled 2 that would be issued to Distributing 2 instead of the Controlled Securities in certain circumstances (such loans, the "Controlled 2 Loans" and such exchange, the "Committed Exchange"). The Committed Exchange would occur in lieu of the Securities Exchange, but only if both the Controlled 2 Securities cannot be priced within the Cap and the Merger Partner shareholders approve the Reverse Merger (described in step (xiv) below). The Controlled 2 Loans will bear interest at a rate equal to the Cap and the terms of the Controlled 2 Loans will be similar to those of the Controlled 2 Securities. Any exchange of Distributing 2 Debt for Controlled 2 Loans will comply with the timing limitations described above with respect to the Securities Exchange—that is, the Distributing 2 Debt will be (i) issued at least n days before the Merger Partner's shareholder vote on the Reverse Merger, and (ii) held by the Financial Institution for at least 0 days for its own account before the Committed Exchange.

- (v) Each of Sub 1, Sub 2, and Sub 3 will convert to a limited liability company (collectively, the "LLCs") pursuant to a state conversion statute, and thereafter will be treated as disregarded as separate from Distributing 2 for federal income tax purposes (the "Sub 1 Conversion," the "Sub 2 Conversion," and the "Sub 3

Conversion,” respectively, and collectively, the “Conversions”). Distributing 2 may cause one or more of the LLCs to legally dissolve or to merge into Distributing 2 at some time following the Conversions.

- (vi) (i) DRE 3 will contribute its interests in the Foreign Business B Entities to Controlled 1 in exchange for Controlled 1 stock and Controlled 1’s deemed assumption of the liabilities of foreign Business B, (ii) DRE 3 will distribute the Controlled 1 stock to DRE 2, and (iii) DRE 2 will distribute the Controlled 1 stock to Distributing 1 (collectively, the “Controlled 1 Contribution”).
- (vii) Distributing 1 will distribute the Controlled 1 stock to PRS 1 (the “Internal Distribution”). The Internal Distribution may be made on a pro rata basis or, alternatively, on a non-pro rata basis in redemption of specifically identified shares of Distributing 1 held by PRS 1.
- (viii) PRS 1 will distribute the Controlled 1 stock, on a non-pro rata basis, to Distributing 2 in redemption of a portion of Distributing 2’s interest in PRS 1 (the “Partnership Distribution”).
- (ix) Controlled 2 will borrow under a credit facility to be established in connection with the Proposed Transaction. The Financial Institution has committed to provide financing to Controlled 2 for this purpose.
- (x) Distributing 2 will contribute the stock of Controlled 1 and Sub 5 and the divisional assets associated with domestic Business B to Controlled 2 in exchange for shares of Controlled 2 common stock, the Controlled 2 Securities, cash funded through the borrowing described in step (ix), and the assumption of liabilities associated with domestic Business B (the “Controlled 2 Contribution”). The cash received by Distributing 2 in the Controlled 2 Contribution (or in a post-closing working capital adjustment (the “Post-Closing Working Capital Adjustment”)) will not exceed Distributing 2’s net basis in the property transferred. Distributing 2 will use any cash received from Controlled 2 to pay its creditors and possibly to pay dividends to shareholders, in each case within approximately one year following the External Distribution (described in step (xiii) below). Liabilities paid with the cash received may include certain long-term indebtedness previously incurred by Distributing 2 (including associated fees), ordinary course liabilities, and borrowings under a revolving credit facility that may be incurred by Distributing 2 prior to completion of the Proposed Transaction in order to repay Distributing 2 indebtedness maturing before the External Distribution.
- (xi) At a time when the Financial Institution has held the Distributing 2 Debt for at least 90 days for its own account, Financial Institution will engage in the Securities Exchange. It is anticipated that the Financial Institution will immediately sell, in a

public offering or otherwise, the Controlled 2 Securities received in the Securities Exchange (the "Securities Offering"). As part of the Securities Offering, Controlled 2 may also issue additional Controlled 2 Securities in exchange for cash to the extent market conditions are favorable to such an issuance. The cash proceeds from such an additional issuance of Controlled 2 Securities would be used by Merger Partner and its affiliates following the Combination (described in step (xv) below) for general corporate purposes. The Financial Institution has not committed to provide any financing in connection with such additional issuance of Controlled 2 Securities.

- (xii) Controlled 2 will recapitalize (the "Recapitalization") by issuing additional shares of Controlled 2 stock to Distributing 2 such that the total number of Controlled 2 shares outstanding immediately after the Recapitalization equals the total number of Distributing 2 shares then outstanding. The Recapitalization will constitute a reorganization within the meaning of section 368(a)(1)(E).
- (xiii) Distributing 2 will distribute, on a pro rata basis, the stock of Controlled 2 to Distributing 2's shareholders (the "External Distribution"). Each Distributing 2 shareholder will receive a single share of Controlled 2 stock for each share of Distributing 2 stock held by such shareholder at the time of the External Distribution.
- (xiv) Pursuant to the Merger Agreement, Merger Sub, a newly formed, wholly owned subsidiary of Merger Partner, will merge with and into Controlled 2, with Controlled 2 surviving and becoming a wholly-owned subsidiary of Merger Partner (the "Reverse Merger"). Pursuant to the Merger Agreement, except for cash received in lieu of fractional shares, the shareholders of Controlled 2 will receive solely voting stock of Merger Partner. In the aggregate, the shareholders of Controlled 2 will receive stock representing g percent (an amount greater than 50 percent) of the total voting power and total combined value of Merger Partner's stock. Fractional shares of Merger Partner will be aggregated by an exchange agent and sold on the market, with the applicable Controlled 2 shareholders receiving their respective shares of the proceeds; this has been considered specifically in issuing the rulings below. Immediately following the Reverse Merger, Merger Partner and its subsidiaries will guarantee the debt of Controlled 2, including the credit facility under which Controlled 2 borrowed pursuant to step (ix) and the Controlled 2 Securities or Controlled 2 Loans, as applicable.
- (xv) Following the Reverse Merger and pursuant to one integrated overall plan of reorganization, Controlled 2 will merge with and into DRE 7, a newly formed State A limited liability company that is wholly owned by Merger Partner and that is disregarded as an entity separate from Merger Partner for federal income tax purposes (the "Forward Merger", and together with the Reverse Merger, the

“Combination”). Immediately following the Forward Merger, Merger Partner will assume the credit facility under which Controlled 2 borrowed pursuant to step (ix) and the Controlled 2 Securities or Controlled 2 Loans, as applicable, under local law. DRE 7 may be subsequently liquidated or merged into Merger Partner.

In connection with the Proposed Transaction, Distributing 2, Controlled 2, and Merger Partner will enter into certain new agreements relating to the separation of Business A from Business B (the “Continuing Arrangements”). The Continuing Arrangements will include a Post-Closing Working-Capital Adjustment, a Tax Matters Agreement, a Transition Services Agreement, an Employee Benefits Agreement, and certain continuing commercial arrangements under which Business A and Business B may provide goods, services, or facilities to each other on market-based terms.

Pursuant to the Merger Agreement, following the Combination and Merger Partner’s annual meeting of shareholders, scheduled for Date 5, Merger Partner’s Board of Directors initially will consist of j members of Merger Partner’s Board elected pursuant to the vote of Merger Partner’s existing shareholders at such annual meeting and k additional members designated by Distributing 2; each of the additional members designated by Distributing 2 are expected to be officers of Distributing 2. All such members of Merger Partner’s Board of Directors will be required to stand for election in the normal course at the next annual meeting. Under Merger Partner’s governing documents, its Board of Directors is empowered to manage the corporation’s business, except with respect to certain matters traditionally reserved to shareholders under State A law. The initial composition of Merger Partner’s Board of Directors has been contemplated in issuing the rulings below.

Furthermore, as a result of the Proposed Transaction, Distributing 2 and Merger Partner may alter their respective share-based compensation arrangements. Specifically, the terms of Distributing 2 stock options, RSUs, and PSUs will be adjusted to preserve the economic benefits thereof. Vesting of a relatively small portion of Distributing 2’s stock options and RSUs will be accelerated in connection with the Proposed Transaction (covering an estimated l employees). Merger Partner expects to keep its share-based compensation arrangements in place following the Proposed Transaction with no changes; however the payment of deferred vested RSUs with respect to approximately m shares of Merger Partner stock will be accelerated as a result of the Combination (which constitutes a change in control with respect to the previously vested, but deferred RSUs under Merger Partner’s plan).

Finally, at the direction of participants, the Distributing 2 Stock Plan may dispose of some or all of the shares of Distributing 2 or Merger Partner reasonably close in time to the consummation of the Proposed Transaction.

Representations

The Sub 1 Conversion

The following representations are made with respect to the Sub 1 Conversion:

- (1a) Sub 1 and Distributing 2 will adopt a plan of liquidation by conversion into a limited liability company (the "Sub 1 Conversion Plan of Liquidation"), and the Sub 1 Conversion will occur pursuant to the Sub 1 Conversion Plan of Liquidation.
- (1b) Distributing 2, on the date of adoption of the Sub 1 Conversion Plan of Liquidation (the "Sub 1 Conversion Plan Date"), and at all times thereafter until the Sub 1 Conversion is completed, will own 100 percent of the single outstanding class of Sub 1 stock.
- (1c) No shares of Sub 1 stock have been redeemed during the three years preceding the Sub 1 Conversion Plan Date.
- (1d) By operation of law, all transfers from Sub 1 to Distributing 2 will occur on the effective date of the Sub 1 Conversion.
- (1e) As soon as the Sub 1 Conversion is effective, Sub 1 will cease to be a going concern, and to conduct any activities as a corporation, for federal income tax purposes.
- (1f) Effective as of the Sub 1 Conversion, all of the stock of Sub 1 will be cancelled, and it will cease to exist as a corporation, for federal income tax purposes.
- (1g) Sub 1 (as a corporation) will not retain any assets following the Sub 1 Conversion.
- (1h) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Sub 1 Conversion Plan Date.
- (1i) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, no assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing 2, except for dispositions in the ordinary course of business or dispositions occurring more than three years prior to the Sub 1 Conversion Plan Date.
- (1j) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, the Sub 1 Conversion will not be

preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 1, if: (i) Recipient is the alter ego of Sub 1; or (ii) persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of section 318(a) as modified by section 304(c)(3).

- (1k) Following the Sub 1 Conversion, there is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation for federal income tax purposes under Treas. Reg. § 301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest), that will prevent Sub 1 from being treated as disregarded from the owner of its membership interests for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.
- (1l) Prior to the Sub 1 Conversion Plan Date, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business, (ii) Sub 1's distribution of its distributive share of the Year 1 Distribution, and (iii) transactions occurring more than three years prior to the Sub 1 Conversion Plan Date.
- (1m) Sub 1 will report all earned income represented by assets that will be deemed distributed to Distributing 2, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (1n) The fair market value of the assets of Sub 1 will exceed its liabilities, both at the Sub 1 Conversion Plan Date and immediately prior to the time the Sub 1 Conversion is effective.
- (1o) There is no intercorporate debt existing between Distributing 2 and Sub 1, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 1 Conversion Plan Date.
- (1p) Distributing 2 is not an organization that is exempt from federal income tax under section 501 or another provision of the Code.
- (1q) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to Sub 1 Conversion have been fully disclosed.

The Sub 2 Conversion

The following representations are made with respect to the Sub 2 Conversion:

- (2a) Sub 2 and Distributing 2 will adopt a plan of liquidation by conversion into a limited liability company (the "Sub 2 Conversion Plan of Liquidation"), and the Sub 2 Conversion will occur pursuant to the Sub 2 Conversion Plan of Liquidation.
- (2b) Distributing 2, on the date of adoption of the Sub 2 Conversion Plan of Liquidation (the "Sub 2 Conversion Plan Date"), and at all times thereafter until the Sub 2 Conversion is completed, will own 100 percent of the single outstanding class of Sub 2 stock.
- (2c) No shares of Sub 2 stock have been redeemed during the three years preceding the Sub 2 Conversion Plan Date.
- (2d) By operation of law, all transfers from Sub 2 to Distributing 2 will occur on the effective date of the Sub 2 Conversion.
- (2e) As soon as the Sub 2 Conversion is effective, Sub 2 will cease to be a going concern, and to conduct any activities as a corporation, for federal income tax purposes.
- (2f) Effective as of the Sub 2 Conversion, all of the stock of Sub 2 will be cancelled, and it will cease to exist as a corporation, for federal income tax purposes.
- (2g) Sub 2 (as a corporation) will not retain any assets following the Sub 2 Conversion.
- (2h) Sub 2 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Sub 2 Conversion Plan Date.
- (2i) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, no assets of Sub 2 have been, or will be, disposed of by either Sub 2 or Distributing 2, except for dispositions in the ordinary course of business or dispositions occurring more than three years prior to the Sub 2 Conversion Plan Date.
- (2j) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, the Sub 2 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 2, if: (i) Recipient is the alter ego of Sub 1; or (ii) persons holding, directly or indirectly, more than 20 percent in value of the Sub 2 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this

representation, ownership will be determined by application of section 318(a) as modified by section 304(c)(3).

- (2k) Following the Sub 2 Conversion, there is no plan or intention to undertake any action (*e.g.*, an election to be treated as an association taxable as a corporation for federal income tax purposes under Treas. Reg. § 301.7701-3, etc.), and no other circumstances will exist (*e.g.*, the existence of a second regarded owner of a member interest), that will prevent Sub 2 from being treated as disregarded from the owner of its membership interests for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.
- (2l) Prior to the Sub 2 Conversion Plan Date, no assets of Sub 2 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business, (ii) Sub 2's distribution of its distributive share of the Year 1 Distribution, and (iii) transactions occurring more than three years prior to the Sub 2 Conversion Plan Date.
- (2m) Sub 2 will report all earned income represented by assets that will be deemed distributed to Distributing 2, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (2n) The fair market value of the assets of Sub 2 will exceed its liabilities, both at the Sub 2 Conversion Plan Date and immediately prior to the time the Sub 2 Conversion is effective.
- (2o) No intercorporate debt between Distributing 2 and Sub 2 has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 2 Conversion Plan Date.
- (2p) Distributing 2 is not an organization that is exempt from federal income tax under section 501 or another provision of the Code.
- (2q) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Sub 2 Conversion have been fully disclosed.

The Sub 3 Conversion

The following representations are made with respect to the Sub 3 Conversion:

- (3a) Sub 3 and Distributing 2 will adopt a plan of liquidation by conversion into a limited liability company (the "Sub 3 Conversion Plan of Liquidation"), and the Sub 3 Conversion will occur pursuant to the Sub 3 Conversion Plan of Liquidation.

- (3b) Distributing 2, on the date of adoption of the Sub 3 Conversion Plan of Liquidation (the "Sub 3 Conversion Plan Date"), and at all times thereafter until the Sub 3 Conversion is completed, will own 100 percent of the single outstanding class of Sub 3 stock.
- (3c) No shares of Sub 3 stock have been redeemed during the three years preceding the Sub 3 Conversion Plan Date.
- (3d) By operation of law, all transfers from Sub 3 to Distributing 2 will occur on the effective date of the Sub 3 Conversion.
- (3e) As soon as the Sub 3 Conversion is effective, Sub 3 will cease to be a going concern, and to conduct any activities as a corporation, for federal income tax purposes.
- (3f) Effective as of the Sub 3 Conversion, all of the stock of Sub 3 will be cancelled, and it will cease to exist as a corporation, for federal income tax purposes.
- (3g) Sub 3 (as a corporation) will not retain any assets following the Sub 3 Conversion.
- (3h) Sub 3 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Sub 3 Conversion Plan Date.
- (3i) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, no assets of Sub 3 have been, or will be, disposed of by either Sub 3 or Distributing 2, except for dispositions in the ordinary course of business or dispositions occurring more than three years prior to the Sub 3 Conversion Plan Date.
- (3j) Except for the contribution by Distributing 2 of the stock of Controlled 1 to Controlled 2 in the Controlled 2 Contribution, the Sub 3 Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 3, if: (i) Recipient is the alter ego of Sub 1; or (ii) persons holding, directly or indirectly, more than 20 percent in value of the Sub 3 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of section 318(a) as modified by section 304(c)(3).
- (3k) Following the Sub 3 Conversion, there is no plan or intention to undertake any action (e.g., an election to be treated as an association taxable as a corporation

for federal income tax purposes under Treas. Reg. § 301.7701-3, etc.), and no other circumstances will exist (e.g., the existence of a second regarded owner of a member interest), that will prevent Sub 3 from being treated as disregarded from the owner of its membership interests for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3.

- (3l) Prior to the Sub 3 Conversion Plan Date, no assets of Sub 3 will have been distributed in kind, transferred, or sold to Distributing 2, except for (i) transactions occurring in the normal course of business, (ii) Sub 3's distribution of its distributive share of the Year 1 Distribution, and (iii) transactions occurring more than three years prior to the Sub 3 Conversion Plan Date.
- (3m) Sub 3 will report all earned income represented by assets that will be deemed distributed to Distributing 2, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (3n) The fair market value of the assets of Sub 3 will exceed its liabilities, both at the Sub 3 Conversion Plan Date and immediately prior to the time the Sub 3 Conversion is effective.
- (3o) No intercorporate debt between Distributing 2 and Sub 3 has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 3 Conversion Plan Date.
- (3p) Distributing 2 is not an organization that is exempt from federal income tax under section 501 or another provision of the Code.
- (3q) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Sub 3 Conversion have been fully disclosed.

The Controlled 1 Contribution and the Internal Distribution

The following representations are made with respect to Controlled 1 Contribution and the Internal Distribution:

- (4a) The indebtedness, if any, owed by Controlled 1 to Distributing 1 after the Internal Distribution will not constitute stock or securities.
- (4b) No part of the consideration to be distributed in the Internal Distribution will be received by any shareholder of Distributing 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

- (4c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 1 will treat all members of its separate affiliated group (the “Distributing 1 SAG”) as defined in section 355(b)(3)(B), as one corporation.
- (4d) The five years of financial information submitted on behalf of foreign Business A conducted by the Distributing 1 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4e) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 1 will treat all members of its separate affiliated group (the “Controlled 1 SAG”) as defined in section 355(b)(3)(B), as one corporation.
- (4f) The five years of financial information submitted on behalf of foreign Business B conducted by the Controlled 1 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4g) Except for certain acquisitions which were immaterial relative to the overall size and scope of foreign Business A, the Distributing 1 SAG neither acquired foreign Business A nor acquired control of an entity conducting foreign Business A during the 5-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (4h) Except for certain acquisitions which were immaterial relative to the overall size and scope of foreign Business B, the Controlled 1 SAG neither acquired foreign Business B nor acquired control of an entity conducting foreign Business B during the 5-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (4i) Following the Internal Distribution, the Distributing 1 SAG will continue the active conduct of foreign Business A and the Controlled 1 SAG will continue the active conduct of foreign Business B independently and with their separate employees (except as provided pursuant to the Continuing Arrangements).
- (4j) The Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution. The Internal Distribution is motivated, in whole or in substantial part, by this corporate business purpose.
- (4k) The Internal Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

- (4l) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (4m) For purposes of section 355(d), immediately after the Internal Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Distribution.
- (4n) Excluding the acquisition of stock (if any) attributable to the initial composition of Merger Partner's Board of Directors and the receipt of cash in lieu of fractional shares by shareholders of Distributing 2 in the Combination, the Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- (4o) Immediately after the Internal Distribution (taking into account section 355(g)(4)), neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (4p) The aggregate fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.
- (4q) The total fair market value of the assets that Distributing 1 will transfer to Controlled 1 in the Controlled 1 Contribution will exceed the sum of: (i) the amount of liabilities (if any) assumed (within the meaning of section 357(d)) by Controlled 1, (ii) the amount of liabilities (if any) owed to Controlled 1 by Distributing 1 that are discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of the property (if any) (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 1 from Controlled 1 in connection

with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the Controlled 1 Contribution.

- (4r) The total adjusted bases of the assets transferred to Controlled 1 by Distributing 1 in the Controlled 1 Contribution will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 (other than the Distributing 1 Deductible Liabilities), and (ii) the amount of money and the fair market value of other property (within the meaning of section 361(b)) received by Distributing 1 and transferred by it to its creditors and shareholders in connection with the plan of reorganization.
- (4s) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled 1 and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (4t) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transaction, Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Distribution.
- (4u) Except for indebtedness that may be created in the ordinary course of business or in connection with the Continuing Arrangements, no indebtedness will exist between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) at the time of, or subsequent to, the Internal Distribution.
- (4v) Except with respect to certain payments made pursuant to the Continuing Arrangements, payments made in connection with continuing transactions between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by parties bargaining at arm's length.
- (4w) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (4x) Distributing 1 and Controlled 1, and their respective shareholders, each will pay their own expenses, if any, incurred in connection with the Controlled 1 Contribution and the Internal Distribution.
- (4y) The incurrence of Distributing 1's deductible liabilities transferred to Controlled 1 in the Controlled 1 Contribution (the "Distributing 1 Deductible Liabilities") did not result in the creation of, or increase in, basis of any assets of Distributing 1 or Controlled 1 or the stock of Distributing 1 or Controlled 1.

- (4z) The Distributing 1 Deductible Liabilities are accrued liabilities for financial accounting purposes by Distributing 1, but will not meet the timing requirements for a deduction by Distributing 1 before the Controlled 1 Contribution under Distributing 1's method of tax accounting. The Distributing 1 Deductible Liabilities will meet the timing requirements for a deduction by Controlled 1 after the Controlled 1 Contribution under Controlled 1's method of tax accounting.
- (4aa) The contribution of assets by Distributing 1 to Controlled 1 in exchange for stock of Controlled 1 in the Controlled 1 Contribution will not be an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (4bb) Each of Distributing 1 and Controlled 1 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after the Controlled 1 Contribution and Internal Distribution.
- (4cc) Neither Distributing 1 nor Controlled 1 will be a passive foreign investment company, within the meaning of section 1297(a), immediately before or after the Controlled 1 Contribution and the Internal Distribution.
- (4dd) PRS 1 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing 1 and Controlled 1 immediately before and after the Controlled 1 Contribution and the Internal Distribution.
- (4ee) Controlled 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after the Controlled 1 Contribution and the Internal Distribution.
- (4ff) The Proposed Transaction will not result in the transfer of stock of any corporation that has been the U.S. transferor, the transferee foreign corporation, or the transferred corporation, or successor thereto, with respect to any unexpired "gain recognition agreement" within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T.

The Partnership Distribution

The following representations are made with respect to the Partnership Distribution:

- (5a) Less than 50 percent of the capital and profits interests in PRS 1 will be transferred in the Conversions.
- (5b) PRS 1 will (i) calculate and report gain (if any) recognized upon the Partnership Distribution under subchapter K of the Code, including gain (if any) recognized under section 704(c)(1)(B), 707, 731, 737, 751(b) or 752 or Treas. Reg. § 1.751-

1. Partners of PRS 1 also will make basis adjustments, if any, resulting from the application of section 752.

(5c) Upon the distribution of Controlled 1, PRS 1 will revalue its assets in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(f).

The Controlled 2 Contribution and the External Distribution

The following representations are made with respect to the Controlled 2 Contribution and the External Distribution:

- (6a) The indebtedness, if any, owed by Controlled 2 to Distributing 2 after the External Distribution will not constitute stock or securities.
- (6b) No part of the consideration to be distributed in the External Distribution will be received by any shareholder of Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (6c) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Distributing 2 will treat all members of its separate affiliated group (the "Distributing 2 SAG") as defined in section 355(b)(3)(B), as one corporation.
- (6d) The five years of financial information submitted on behalf of domestic Business A conducted by the Distributing 2 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (6e) In applying section 355(b)(2)(A) regarding the active conduct of a trade or business, Controlled 2 will treat all members of its separate affiliated group (the "Controlled 2 SAG") as defined in section 355(b)(3)(B), as one corporation.
- (6f) The five years of financial information submitted on behalf of Business B conducted by the Controlled 2 SAG is representative of its present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (6g) Except for certain acquisitions which were immaterial relative to the overall size and scope of domestic Business A, the Distributing 2 SAG neither acquired domestic Business A nor acquired control of an entity conducting domestic Business A during the 5-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

- (6h) Except pursuant to the Proposed Transaction and except for certain acquisitions which were immaterial to the overall size and scope of Business B, the Controlled 2 SAG neither acquired Business B nor acquired control of an entity conducting Business B during the 5-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (6i) Following the External Distribution, the Distributing 2 SAG will continue the active conduct of domestic Business A and the Controlled 2 SAG will continue the active conduct of Business B independently and with their separate employees (except as provided pursuant to the Continuing Arrangements).
- (6j) The External Distribution will be carried out for the corporate business purposes of facilitating the Combination and allowing management of each of Business A and Business B to focus their attention, as well as available financial and human resources, on growing their respective businesses. The External Distribution is motivated, in whole or in substantial part, by these corporate business purposes.
- (6k) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
- (6l) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (6m) For purposes of section 355(d), immediately after the External Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the External Distribution.
- (6n) Excluding the acquisition of stock (if any) attributable to the initial composition of Merger Partner's Board of Directors and the receipt of cash in lieu of fractional shares by shareholders of Distributing 2 in the Combination, the External Distribution is not part of a plan or series of related transactions (within the

- meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).
- (6o) Immediately after the External Distribution (taking into account section 355(g)(4)), neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
 - (6p) The aggregate fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will equal or exceed the aggregate adjusted basis of such assets.
 - (6q) The total fair market value of the assets that Distributing 2 will transfer to Controlled 2 in the Controlled 2 Contribution will exceed the sum of: (i) the amount of liabilities (if any) assumed (within the meaning of section 357(d)) by Controlled 2, (ii) the amount of liabilities (if any) owed to Controlled 2 by Distributing 2 that are discharged or extinguished in the exchange, and (iii) the amount of cash and the fair market value of the property (if any) (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 2 from Controlled 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the Controlled 2 Contribution.
 - (6r) The total adjusted bases of the assets transferred to Controlled 2 by Distributing 2 in the Controlled 2 Contribution will each equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 2 (other than the Distributing 2 Deductible Liabilities), and (ii) the total amount of money and the fair market value of other property (within the meaning of section 361(b)) received by Distributing 2 and transferred by it to its creditors and shareholders in connection with the plan of reorganization.
 - (6s) The liabilities, if any, assumed (within the meaning of section 357(d)) by Controlled 2 and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
 - (6t) The Controlled 2 Securities and the Controlled 2 Loans will constitute securities for purposes of the application of section 361(a).
 - (6u) Except pursuant to the elimination or reduction of intercompany balances in connection with the Proposed Transaction, Distributing 2 neither accumulated its

receivables nor made extraordinary payment of its payables in anticipation of the External Distribution.

- (6v) Except for indebtedness that may be created in the ordinary course of business or in connection with the Continuing Arrangements, no indebtedness will exist between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) at the time of, or subsequent to, the External Distribution.
- (6w) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19 will be included in income, as appropriate.
- (6x) Except with respect to certain payments made pursuant to the Continuing Arrangements, payments made in connection with continuing transactions between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by parties bargaining at arm's length.
- (6y) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (6z) The sum of the amount of Distributing 2 Debt exchanged for Controlled 2 Securities in the Securities Exchange (or exchanged for Controlled 2 Loans in the Committed Exchange) and the amount of other Distributing 2 debt repaid with any cash received from Controlled 2 in the Controlled 2 Contribution or pursuant to the Post-Closing Working Capital Adjustment will not exceed the weighted quarterly average of all of Distributing 2's debt owed to unrelated third parties for the 12 month-period ending on the day before Distributing 2's Board of Directors first discussed the proposed divestiture of Business B.
- (6aa) Distributing 2 and Controlled 2, and their respective shareholders, each will pay their own expenses, if any, incurred in connection with the Controlled 2 Contribution and the External Distribution.
- (6bb) The incurrence of Distributing 2's deductible liabilities transferred to Controlled 2 in the Controlled 2 Contribution (the "Distributing 2 Deductible Liabilities") did not result in the creation of, or increase in, basis of any assets of Distributing 2 or Controlled 2 or the stock of Distributing 2 or Controlled 2.

- (6cc) The Distributing 2 Deductible Liabilities are accrued liabilities for financial accounting purposes by Distributing 2, but will not meet the timing requirements for a deduction by Distributing 2 before the Controlled 2 Contribution under Distributing 2's method of tax accounting. The Distributing 2 Deductible Liabilities will meet the timing requirements for a deduction by Controlled 2 after the Controlled 2 Contribution under Controlled 2's method of tax accounting.

The Combination

The following representations are made with respect to the Combination:

- (7a) DRE 7 is (and will be at the time of the Forward Merger) a single member limited liability company that is disregarded as an entity separate from Merger Partner (within the meaning of Treas. Reg. § 1.368-2(b)(1)(i)(A)).
- (7b) The Forward Merger is being effected pursuant to the laws of State A and will qualify as a statutory merger under applicable State A law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously at the effective time of the Forward Merger: (i) all of the assets and all of the liabilities of Controlled 2 immediately before the Forward Merger will become the assets and liabilities of Merger Partner (through its interest in DRE 7) for federal income tax purposes; and (ii) Controlled 2 will cease its separate legal existence for all purposes. Immediately following the Forward Merger, Merger Partner will assume the credit facility under which Controlled 2 borrowed pursuant to step (ix) and the Controlled 2 Securities or Controlled 2 Loans, as applicable, under local law.
- (7c) The fair market value of the Merger Partner common stock received by each Controlled 2 shareholder in the Combination (including any fractional share interest with respect to which cash is received) will be approximately equal to the fair market value of the Controlled 2 common stock surrendered by the shareholder in the Combination.
- (7d) At least 40 percent of the proprietary interest in Controlled 2 will be exchanged for Merger Partner stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)).
- (7e) There is no plan or intention for Merger Partner or any person related (within the meaning of Treas. Reg. § 1.368-1(e)(3)) to Merger Partner to acquire, directly or indirectly, any Merger Partner common stock issued in the Combination. In addition, neither Merger Partner nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(3)) to Merger Partner will have acquired, directly or indirectly, any stock of Controlled 2 with consideration other than Merger Partner common stock.

- (7f) There is no plan or intention to sell or otherwise dispose of any of the Controlled 2 assets acquired in the Combination, except for dispositions made in the ordinary course of business or transfers of assets to which section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k) applies.
- (7g) The liabilities of Controlled 2 assumed by Merger Partner (through its interest in DRE 7) and the liabilities to which the transferred assets of Controlled 2 are subject were incurred by Controlled 2 in the ordinary course of its business and are associated with the assets transferred, other than the credit facility under which Controlled 2 borrowed pursuant to step (ix) and the Controlled 2 Securities or Controlled 2 Loans, as applicable.
- (7h) Following the Combination, Merger Partner will continue Controlled 2's historic business or use a significant portion of Controlled 2's historic assets in a business, directly, through its interest in DRE 7, or through one or more members of Merger Partner's qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)).
- (7i) Merger Partner, Controlled 2, and the Controlled 2 shareholders each will pay their own expenses incurred in connection with the Combination.
- (7j) Merger Partner does not own, directly or indirectly, and has not owned during the past five years, directly or indirectly, any stock of Controlled 2.
- (7k) The shareholders of Controlled 2 will have no dissenters' rights with respect to the Combination and therefore no funds will be supplied, directly or indirectly, by Merger Partner to, and Merger Partner directly or indirectly will not reimburse, Controlled 2 for any payments to any dissenting shareholders for the value of their stock.
- (7l) No two parties to the Combination will be investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (7m) There is no intercorporate indebtedness existing between Merger Partner and Controlled 2 that was issued, acquired, or will be settled at a discount.
- (7n) Neither Controlled 2 nor Merger Partner is under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (7o) Immediately after the Combination, the fair market value of Merger Partner's assets will exceed the amount of its liabilities.

- (7p) Immediately before the Combination, the total fair market value of the assets of Controlled 2 transferred to Merger Partner (through its interest in DRE 7) will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Merger Partner in connection with the Combination; (ii) the amount of any liabilities owed to Merger Partner by Controlled 2 that is discharged or extinguished in connection with the Combination; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by Controlled 2 in connection with the Combination.
- (7q) The receipt of cash in lieu of fractional shares, if any, of Merger Partner stock will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash consideration that will be received in connection with the Combination in lieu of fractional shares of Merger Partner stock is not intended to exceed one percent of the total consideration that will be distributed to holders of Controlled 2 stock in the Combination. Any fractional share interests will be aggregated, and it is intended that no Controlled 2 shareholder will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled 2 stock.

Rulings

The Sub 1 Conversion

Based solely on the information and representations submitted, we rule as follows on the Sub 1 Conversion:

- (1) The Sub 1 Conversion will be treated as a distribution by Sub 1 in complete liquidation under section 332(a).
- (2) Distributing 2 will recognize no gain or loss on the deemed receipt of the assets and liabilities of Sub 1 pursuant to the Sub 1 Conversion (section 332(a)).
- (3) Sub 1 will recognize no gain or loss on the deemed distribution of its assets and liabilities to Distributing 2 in the Sub 1 Conversion (section 337(a)).
- (4) Distributing 2's basis in each asset deemed received from Sub 1 pursuant to the Sub 1 Conversion will equal the basis of such asset in the hands of Sub 1 immediately before the Sub 1 Conversion (section 334(b)(1)).
- (5) Distributing 2's holding period in each asset deemed received from Sub 1 in the Sub 1 Conversion will include the period during which Sub 1 held such asset (section 1223(2)).

- (6) Distributing 2 will succeed to and take into account the items of Sub 1 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a)(1) and Treas. Reg. § 1.381(a)-1).
- (7) Except to the extent Sub 1's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of the Sub 1 Conversion (section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 1 will be used only to offset earnings and profits accumulated after the date of the Sub 1 Conversion (section 381(c)(2)(B)).

The Sub 2 Conversion

Based solely on the information and representations submitted, we rule as follows on the Sub 2 Conversion:

- (8) The Sub 2 Conversion will be treated as a distribution by Sub 2 in complete liquidation under section 332(a).
- (9) Distributing 2 will recognize no gain or loss on the deemed receipt of the assets and liabilities of Sub 2 pursuant to the Sub 2 Conversion (section 332(a)).
- (10) Sub 2 will recognize no gain or loss on the deemed distribution of its assets and liabilities to Distributing 2 in the Sub 2 Conversion (section 337(a)).
- (11) Distributing 2's basis in each asset deemed received from Sub 2 pursuant to the Sub 2 Conversion will equal the basis of such asset in the hands of Sub 2 immediately before the Sub 2 Conversion (section 334(b)(1)).
- (12) Distributing 2's holding period in each asset deemed received from Sub 2 in the Sub 2 Conversion will include the period during which Sub 2 held such asset (section 1223(2)).
- (13) Distributing 2 will succeed to and take into account the items of Sub 2 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a)(1) and Treas. Reg. § 1.381(a)-1).
- (14) Except to the extent Sub 2's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of

the Sub 2 Conversion (section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 2 will be used only to offset earnings and profits accumulated after the date of the Sub 2 Conversion (section 381(c)(2)(B)).

The Sub 3 Conversion

Based solely on the information and representations submitted, we rule as follows on the Sub 3 Conversion:

- (15) The Sub 3 Conversion will be treated as a distribution by Sub 3 in complete liquidation under section 332(a).
- (16) Distributing 2 will recognize no gain or loss on the deemed receipt of the assets and liabilities of Sub 3 pursuant to the Sub 3 Conversion (section 332(a)).
- (17) Sub 3 will recognize no gain or loss on the deemed distribution of its assets and liabilities to Distributing 2 in the Sub 3 Conversion (section 337(a)).
- (18) Distributing 2's basis in each asset deemed received from Sub 3 pursuant to the Sub 3 Conversion will equal the basis of such asset in the hands of Sub 3 immediately before the Sub 3 Conversion (section 334(b)(1)).
- (19) Distributing 2's holding period in each asset deemed received from Sub 3 in the Sub 3 Conversion will include the period during which Sub 3 held such asset (section 1223(2)).
- (20) Distributing 2 will succeed to and take into account the items of Sub 3 described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a)(1) and Treas. Reg. § 1.381(a)-1).
- (21) Except to the extent Sub 3's earnings and profits are reflected in Distributing 2's earnings and profits, Distributing 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 3 as of the date of the Sub 3 Conversion (section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 3 will be used only to offset earnings and profits accumulated after the date of the Sub 3 Conversion (section 381(c)(2)(B)).

The Controlled 1 Contribution and the Internal Distribution

Based solely on the information and representations submitted, we rule as follows on the Controlled 1 Contribution and the Internal Distribution:

- (22) The Controlled 1 Contribution together with the Internal Distribution will be a reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled 1 each will be “a party to a reorganization” within the meaning of section 368(b).
- (23) Distributing 1 will recognize no gain or loss upon the Controlled 1 Contribution (sections 361(a) and 357(a)). The Distributing 1 Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing 1 assumed by Controlled 1 for purposes of sections 357(c) and 361(b)(3).
- (24) Controlled 1 will recognize no gain or loss upon the Controlled 1 Contribution (section 1032(a)).
- (25) Controlled 1's basis in each asset received from Distributing 1 in the Controlled 1 Contribution will equal the basis of the asset in the hands of Distributing 1 immediately before the Controlled 1 Contribution (section 362(b)).
- (26) Controlled 1's holding period in each asset received from Distributing 1 in the Controlled 1 Contribution will include the period during which such asset was held by Distributing 1 (section 1223(2)).
- (27) Distributing 1 will recognize no gain or loss upon the Internal Distribution (section 361(c)).
- (28) PRS 1 will recognize no gain or loss (and no amount will be includible in its income) upon the receipt of Controlled 1 stock in the Internal Distribution (section 355(a)(1)).
- (29) Provided that the Internal Distribution is made as a pro rata distribution with respect to the stock of Distributing 1 held by PRS 1, the basis of the Controlled 1 stock and the Distributing 1 stock in the hands of PRS 1 immediately after the Internal Distribution will equal the basis of the Distributing 1 stock held by PRS 1 immediately before the Internal Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each immediately following the Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(iv) (section 358(b)(2) and (c)). If, instead, the Internal Distribution is made as an exchange of Controlled 1 stock for specified shares of Distributing 1 stock, the basis of the Controlled 1 stock received by PRS 1 in the Internal

Distribution will equal the basis of the Distributing 1 shares exchanged therefor in accordance with Treas. Reg. § 1.358-2(a)(2)(i) (section 358(b)(2) and (c)).

- (30) PRS 1's holding period in the Controlled 1 stock received in the Internal Distribution will include the holding period of the Distributing 1 stock with respect to which the Internal Distribution is made, provided that such Distributing 1 stock is held as a capital asset on the date of the Internal Distribution (section 1223(1)).
- (31) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
- (32) The Controlled 1 Contribution will be an exchange to which Treas. Reg. § 1.367(b)-1(c) and Treas. Reg. § 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of the Controlled 1 Contribution.
- (33) The Internal Distribution will be an exchange to which Treas. Reg. § 1.367(b)-1(c), Treas. Reg. § 1.367(b)-5(a), Treas. Reg. § 1.367(b)-5(c) or (d), and Treas. Reg. § 1.367(b)-5(f) apply. Provided that the Internal Distribution is made as a pro rata distribution with respect to the stock of Distributing 1 held by Distributing 1's shareholder, if PRS 1's postdistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than its predistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to such corporation, PRS 1's basis in such stock immediately after the Internal Distribution must be reduced by the amount of the difference. However, PRS 1's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, PRS 1 must instead include such amount in income as deemed dividend from such corporation. If PRS 1 reduces the basis in the stock of Distributing 1 or Controlled 1 (or has an inclusion with respect to such stock), PRS 1 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4). If the Internal Distribution is made as an exchange of Controlled 1 stock for specified shares of Distributing 1 stock, and if PRS 1's postdistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than PRS 1's predistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to such corporation, PRS 1 must include in income as a deemed dividend the amount of the difference. Any basis increase provided in Treas. Reg. § 1.367(b)-2(e)(3)(ii) shall apply to a deemed dividend that is included in income pursuant to Treas. Reg. § 1.367(b)-5(d)(3) only to the extent that such basis increase does not increase the distributee's basis above the fair market value of such stock and does not diminish the distributee's postdistribution amount with respect to such corporation.

The Controlled 2 Contribution, the External Distribution, and the Securities Exchange (or the Committed Exchange)

Based solely on the information and representations submitted, we rule as follows on the Controlled 2 Contribution, the External Distribution, and the Securities Exchange (or the Committed Exchange):

- (34) The Controlled 2 Contribution, together with the External Distribution and the Securities Exchange or the Committed Exchange, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing 2 and Controlled 2 each will be “a party to a reorganization” within the meaning of section 368(b).
- (35) Distributing 2 will recognize no gain or loss upon the Controlled 2 Contribution (sections 361(a) and 357(a)). The Distributing 2 Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing 2 assumed by Controlled 2 for purposes of sections 357(c) and 361(b)(3).
- (36) Controlled 2 will recognize no gain or loss upon the Controlled 2 Contribution (section 1032(a)).
- (37) Controlled 2's basis in each asset received from Distributing 2 in the Controlled 2 Contribution will equal the basis of such asset in the hands of Distributing 2 immediately before the Controlled 2 Contribution (section 362(b)).
- (38) Controlled 2's holding period in each asset received from Distributing 2 in the Controlled 2 Contribution will include the period during which such asset was held by Distributing 2 (section 1223(2)).
- (39) Distributing 2 will recognize no gain or loss upon the External Distribution and will recognize no income, gain, deduction, or loss upon the Securities Exchange or the Committed Exchange, as applicable, other than (i) deductions attributable to the fact that Distributing 2 Debt may be redeemed at a premium, (ii) income attributable to the fact that Distributing 2 Debt may be redeemed at a discount, and (iii) interest expense accrued with respect to Distributing 2 Debt (section 361(c)).
- (40) Distributing 2's shareholders will recognize no gain or loss (and no amount will be includible in their income) upon the receipt of Controlled 2 stock in the External Distribution (section 355(a)(1)).
- (41) The basis of the Controlled 2 stock and the Distributing 2 stock in the hands of Distributing 2's shareholders immediately after the External Distribution will equal the basis of the Distributing 2 stock held by Distributing 2's shareholders immediately before the External Distribution, allocated between the stock of

Distributing 2 and Controlled 2 in proportion to the fair market value of each immediately following the External Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(i) (section 358(b)(2) and (c)).

- (42) The holding period of the Controlled 2 stock received by each Distributing 2 shareholder in the External Distribution will include the holding period of the Distributing 2 stock with respect to which the External Distribution is made, provided the Distributing 2 stock is held as a capital asset on the date of the External Distribution (section 1223(1)).
- (43) The earnings and profits of Controlled 1, to the extent attributable to Controlled 1 stock held by Distributing 1 under Treas. Reg. § 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in tax years of such foreign corporation beginning after December 31, 1962, and during the period in which such corporation was a controlled foreign corporation (within the meaning of section 957(a)), will be attributable to such stock held by Controlled 2 (Treas. Reg. § 1.1248-1(a)(1)).
- (44) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (45) Except for purposes of section 355(g), payments made between any of Distributing 2 and Controlled 2 and their respective affiliates pursuant to the Continuing Arrangements with respect to liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution and (ii) will not become fixed and ascertainable until after the External Distribution, will be treated as occurring before the External Distribution (*See Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

The Combination

Based solely on the information and representations submitted, we rule as follows on the Combination:

- (46) The Combination will constitute a reorganization within the meaning of section 368(a)(1)(A) (Rev. Rul. 2001-46, 2001-2 C.B. 321). Merger Partner and Controlled 2 each will be “a party to a reorganization” within the meaning of section 368(b).
- (47) Controlled 2 will recognize no gain or loss upon the transfer of its assets to Merger Partner in exchange for Merger Partner stock and the assumption of liabilities by Merger Partner (sections 361(a) and 357(a)).

- (48) Controlled 2 will recognize no gain or loss on the distribution of Merger Partner stock to its shareholders (section 361(c)).
- (49) Merger Partner will recognize no gain or loss on its receipt of Controlled 2's assets in exchange for Merger Partner stock (section 1032(a)).
- (50) Merger Partner's basis in each asset received from Controlled 2 in the Combination will equal the basis of such asset in the hands of Controlled 2 immediately before the Combination (section 362(b)).
- (51) Merger Partner's holding period in each asset received from Controlled 2 in the Combination will include the period during which such asset was held by Controlled 2 (section 1223(2)).
- (52) Controlled 2's shareholders will recognize no gain or loss on the receipt of Merger Partner stock (including any fractional share interests deemed received) solely in exchange for their shares of Controlled 2 stock (section 354(a)).
- (53) Controlled 2's shareholders' basis in the Merger Partner stock received in the Combination (including any fractional share interests deemed received) will be the same as their basis in the Controlled 2 stock surrendered in exchange therefore (section 358(a)).
- (54) The holding period of the Merger Partner stock received by each Controlled 2 shareholder in the Combination will include the holding period of the Controlled 2 stock surrendered in exchange therefore, provided that the Controlled 2 stock is held as a capital asset on the date of the exchange (section 1223(1)).
- (55) The receipt by Controlled 2 shareholders of cash in lieu of fractional shares of Merger Partner stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Controlled 2 shareholders in the Combination and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange pursuant to which gain or loss is recognized under section 1001.
- (56) Merger Partner will succeed to and take into account the items of Controlled 2 described in section 381(c), subject to the provisions and limitations specified in sections 381, 382, 383, 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
- (57) Merger Partner will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Controlled 2 as of the date of the Combination (section 381(c)(2)(A) and Treas. Reg. § 1.381(c)(2)-1).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Internal Distribution and the External Distribution satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Internal Distribution and the External Distribution are used principally as a device for the distribution of earnings and profits of Distributing 2, Distributing 1, Controlled 2, Controlled 1 or any combination thereof (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Internal Distribution and External Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii), provided that for purposes of Rulings (27) and (39), we have assumed that any acquisitions of stock that result or are deemed to result from (a) the initial composition of Merger Partner's Board of Directors following the Combination and Merger Partner's annual meeting of shareholders scheduled for Date 5 and (b) the receipt of cash in lieu of fractional shares in the Reverse Merger are, in each case, acquisitions of stock that are part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Internal Distribution and the External Distribution;
- (iv) To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367(a) or (b) apply;
- (v) To the extent not otherwise specifically ruled upon above, any other consequences under section 367 with respect to any of the transactions described in this ruling letter;
- (vi) The Taxpayer has not represented that Distributing 2 has not been a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the External Distribution, that Distributing 2 will not be a United States real property holding corporation immediately after the External Distribution, or that no foreign person will hold greater than five percent of the stock of Distributing 2 on the date of the External Distribution. Therefore, no opinion is expressed regarding the federal income tax

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consequences to any greater than five percent foreign shareholder under section 897 as a result of the External Distribution; and

- (vii) The federal tax consequences of the Proposed Transaction under Subchapter K of the Code and, in particular, under sections 734, 743, 751(b) or 755 with respect to steps (v) and (viii) of the Proposed Transaction.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the powers of attorney on file in this office, a copy of this ruling letter will be sent to the representatives named therein.

Sincerely,

Frances L. Kelly
Acting Branch Chief, Branch 2
(Corporate)

cc: